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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

THE PEOPLE,

Plaintiff and Respondent,

v.

QUINTANA MARCOS GALLARDO,

Defendant and Appellant.

C081104

(Super. Ct. No. CRF15329)

Appointed counsel for defendant Quintana Marcos Gallardo asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) Finding no arguable error that would result in a disposition more favorable to defendant, we affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (*People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

At an unspecified date in 2014, in a public place, defendant touched the vaginal area of a child born in 2002. Between January and May 2015, defendant touched the same child's genital area again, this time as the child sat on a couch at her home. Also

between January and May 2015, while at home, defendant twice touched the breast and buttocks of another child born in 2000; once in the kitchen and once on the bed.

Defendant was born in 1978.

The People charged defendant with two counts of committing a lewd or lascivious act upon the body of a child under the age of 14 years (Pen. Code, § 288, subd. (a))¹ and two counts of oral copulation with a child under the age of 14 years (§ 288a, subd. (c)(1)).

Defendant pleaded guilty to one count of committing a lewd or lascivious act upon the body of a child under the age of 14 years. He agreed the remaining charges would be dismissed with a *Harvey* waiver. (*People v. Harvey* (1979) 25 Cal.3d 754.) The parties also agreed defendant would be sentenced to serve no more than three years in state prison and his eligibility for probation was dependent upon the section 288.1 report.

At sentencing, the trial court indicated it had received the section 288.1 report as well as the probation report. Defendant's counsel argued this was an unusual case and probation was the appropriate sentence; the People argued otherwise. The trial court found the case was not unusual and sentenced defendant to serve three years in state prison. The court imposed various fines and fees including a \$1,140 fine pursuant to section 290.3, for which defendant waived the breakdown. The court also reserved jurisdiction over direct victim restitution and awarded defendant 44 days of custody credit.

Defendant filed a timely notice of appeal but did not obtain a certificate of probable cause.

¹ Undesignated statutory references are to the Penal Code.

Counsel filed an opening brief that sets forth the facts of the case and requests that we review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

_____/s/
HOCH, J.

We concur:

_____/s/
ROBIE, Acting P. J.

_____/s/
DUARTE, J.